IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SALES TAX REFERENCE No 13 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

MAHALAXMI METAL QUARRY WORKS

Appearance:

1. SALES TAX REFERENCE No. 13 of 1995
MR PRACHHAK, AGP, for Petitioner No. 1
MR TANVISH U BHATT for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 18/06/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue, the following question of law has been referred to this court for its opinion under the provisions of sec. 69 of the Sales Tax Act, 1969 (hereinafter referred to as 'the Act') :

"Whether, on the facts and circumstances of the case, the decision of the Tribunal dated 27.9.88 is perverse or not and whether the Tribunal is right and justified in law in holding that cutting of stones into different sizes after they are cut by crushing into chips does not bring about a commercially different article and hence the registered dealer's resale claim for deduction against goods purchased by the opponent from registered dealer is admissible to them and so penalty levied will stand removed?"

2. We have heard learned AGP Shri Prachhak for the applicant-State and learned advocate Shri Tanvish Bhatt for the respondent assessee.

3. The learned advocates have fairly submitted that after the aforesaid question was referred to this court, the Hon'ble Supreme Court has delivered judgments in the cases of Commissioner of Sales Tax, U.P. v. Lal Kunwa Stone Crusher (P) Ltd., (2000) 3 SCC 525 and State of Maharashtra v. Mahalaxmi Stores, (2003) 1 SCC 70, wherein the issue, which has been referred to this court, was involved.

4. The learned advocates have submitted that in view of the judgments delivered by the Hon'ble Supreme Court and more particularly in view of a circular bearing No. C.S.O./3/928/2002-03/J. 2684/5-2-03 dated 5.2.2003 issued by the applicant State of Gujarat, the reference will have to be answered in favour of the assessee and against the revenue.

5. The question, which is involved in this reference, is whether crushing of stone boulders so as to make gitty or kapchi or to have any other smaller form of stone would amount to manufacturing process. At an earlier point of time, in view of the judgment delivered in the case of M/s. Lina Traders v. State of Gujarat, 1980 GSTB 228, this court had opined that the process of crushing stone boulders for the purpose of making chips for manufacture of floor tiles, would amount to a

manufacturing process. However, subsequently in view of the judgments delivered by the Hon'ble Supreme Court, which have been referred to hereinabove, the position has been changed as the Hon'ble Supreme Court has held that crushing of boulders so as to have smaller size of stones would not amount to a manufacturing process. It is not in dispute that the judgments referred to hereinabove of the Hon'ble Supreme Court would squarely cover the issue with which this court is concerned in this reference.

6. In view of the law laid down by the Hon'ble Supreme Court in the aforesaid two judgments, we answer the question in favour of the assessee and against the revenue.

The reference, thus, stands disposed of with no order as to costs.

(A.R. Dave, J.)

(A.M.Kapadia, J.)

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